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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. *2011-665*

11 **MARLENE D. DALEY**  
12 **1515 Grismer Avenue, #101**  
13 **Burbank, CA 91504**

**A C C U S A T I O N**

14 **Registered Nurse License No. 568333**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about July-12, 2000, the Board of Registered Nursing issued Registered Nurse  
23 License Number 568333 to Marlene D. Daley (Respondent). The Registered Nurse License was  
24 in full force and effect at all times relevant to the charges brought herein and will expire on  
25 February 29, 2012, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that  
28 the Board may discipline any licensee, including a licensee holding a temporary or an inactive

1 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing  
2 Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not  
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
5 to render a decision imposing discipline on the license. Under Code section 2811, subdivision  
6 (b), the Board may renew an expired license at any time within eight years after the expiration.

7 5. Code section 2761, subdivision (a), states, in pertinent part, that the Board may take  
8 disciplinary action against a certified or licensed nurse or deny an application for a certificate or  
9 license for unprofessional conduct. Unprofessional conduct includes the following:

10 \* \* \* \*

11 (d) Violating or attempting to violate, directly or indirectly, or assisting  
12 in or abetting the violating of, or conspiring to violate any provision or term of this  
chapter or regulations adopted pursuant to it.

13 6. Code section 2762 states, in pertinent part:

14 In addition to other acts constituting unprofessional conduct within the  
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
person licensed under this chapter to do any of the following:

16 (a) Obtain or possess in violation of law, or prescribe, or except as  
17 directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
18 himself or herself, or furnish or administer to another, any controlled substance as  
defined in Division 10 (commencing with Section 11000) of the Health and Safety  
Code or any dangerous drug or dangerous device as defined in Section 4022.

19 7. Code section 4022 states:

20 "Dangerous drug" or "dangerous device" means any drug or device  
21 unsafe for self-use in humans or animals, and includes the following:

22 (a) Any drug that bears the legend: "Caution: federal law prohibits  
23 dispensing without prescription," "Rx only," or words of similar import.

24 (b) Any device that bears the statement: "Caution: federal law restricts  
25 this device to sale by or on the order of a -----," "Rx only," or words of similar  
import, the blank to be filled in with the designation of the practitioner licensed to use  
or order use of the device.

26 (c) Any other drug or device that by federal or state law can be lawfully  
27 dispensed only on prescription or furnished pursuant to Section 4006.

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1 8. Code section 4060 states, in pertinent part:

2 No person shall possess any controlled substance, except that furnished to  
3 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
5 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
6 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
7 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
8 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
9 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

10 9. Health and Safety Code section 11170 states that no person shall prescribe,  
11 administer, or furnish a controlled substance for herself or himself.

12 10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that  
13 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to  
14 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,  
15 misrepresentation, or subterfuge . . ."

#### 16 COST RECOVERY

17 11. Code section 125.3 provides, in pertinent part, that the Board may request the  
18 administrative law judge to direct a licentiate found to have committed a violation or violations of  
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
20 enforcement of the case.

#### 21 CONTROLLED SUBSTANCE AND DANGEROUS DRUG AT ISSUE

22 12. "Dilaudid", a brand of Hydromorphone, is a Schedule II controlled substance as  
23 designated by Health and Safety Code section 11055, subdivision (b)(1)(K), and a dangerous  
24 drug.

#### 25 PYXIS SYSTEM

26 13. "Pyxis System" is an automated and computerized medication dispensing system,  
27 which operates similar to an ATM at a bank. The Pyxis medication dispensing machines are  
28 serviced by the facility's pharmacy. Medications are placed in the Pyxis machines, which are  
usually stationed throughout the hospital. These medications can only be accessed or withdrawn  
by an authorized staff person using their own unique personalized access code. Each medical  
professional at the hospital is assigned an account number and a "one time only" access code

number. The access code number allows the individual to access the Pyxis System only one time. Upon making this initial access, the Pyxis System prompts the individual to enter his or her own unique access number or PIN code. The Pyxis System will not permit the use of a PIN code that has been used by any former employee, or is being used by any other current employee. After entering their own unique PIN code and each time the Pyxis System is accessed using that PIN code, the person making Access is identified and a database record of the transaction is made, which is similar to the ATM withdrawal of funds from a bank account. The dispensing station makes a record of the medication and its dose, date and time it was withdrawn, the user identification, and patient for whom it was withdrawn.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Obtained and Possessed a Controlled Substance in Violation of Law)**

14. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that on or about December 6, 2007, while on duty as a registered nurse at UCLA Medical Center located at 10833 Le Conte, Los Angeles, California 90024, Respondent did the following:

##### **Diversion of Controlled Substances:**

a. Respondent began her employment as a staff nurse with UCLA Medical Center on or about July of 2007, and was still on her probationary period with her employer, when she used the Pyxis system to divert the controlled substance Dilaudid/Hydromorphone, by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code sections 11170 and 11173, subdivision (a), as follows: On or about December 6, 2007, while working at UCLA Medical Center, Respondent diverted Hydromorphone for her personal use, by withdrawing 13 - 2mg tubexes of Hydromorphone via an override function, for a single patient who did not have an order for this medication<sup>12</sup>. The Pyxis Activity Report shows that Respondent withdrew the

<sup>1</sup> The Pyxis machine has an override function that allows a registered nurse to take out medication even if a patient does not have an order for that medication. Since Hydromorphone is a pain medication, it is on Pyxis's override function.

<sup>2</sup> The patients' identifying information has been withheld to protect their privacy rights.  
(continued...)

medication from the Pyxis machine while she was on duty, as follows:

DATE	TIME	QUANTITY	MEDICATION NAME	USER ID AND NAME
12/06/07	07:16	2	Hydromorphone 2mg – 1ml Tubex	NSMDA5 – Daley, Marlene
12/06/07	08:15	2	Hydromorphone 2mg– 1ml Tubex	NSMDA5 – Daley, Marlene
12/06/07	09:23	2	Hydromorphone 2mg – 1ml Tubex	NSMDA5 – Daley, Marlene
12/06/07	13:37	2	Hydromorphone 2mg – 1ml Tubex	NSMDA5 – Daley, Marlene
12/06/07	14:07	2	Hydromorphone 2mg – 1ml Tubex	NSMDA5 – Daley, Marlene
12/06/07	17:42	2	Hydromorphone 2mg – 1ml Tubex	NSMDA5 – Daley, Marlene
12/06/07	18:50	1	Hydromorphone 2mg – 1ml Tubex	NSMDA5 – Daley, Marlene

b. Respondent was the last registered nurse on December 6, 2007 to remove Hydromorphone from the Pyxis machine.

c. On or about December 7, 2007, a discrepancy was noted in the Pyxis machine regarding 10 – 2 mg tubexes of Hydromorphone. After completion of an investigation by Barbara Anderson, R.N., Nursing Supervisor of the Neuro Trauma Intensive Care Unit (Respondent's direct supervisor) at UCLA Medical Center, it was determined that 10 - 2mg tubexes of Hydromorphone were unaccounted for. There was no documentation by Respondent of the administration of the 10 – 2mg tubexes of Hydromorphone to a patient or patients in any patient chart or hospital record, and no documentation of the wasting of any Hydromorphone on this date.

d. On or about December 7, 2007, Ms. Anderson asked Respondent about the missing medication. Respondent replied to the effect that "I have a problem. I need help. I took the hydromorphone." Respondent was going to be terminated from her employment as a result of the

Upon request, Complainant will disclose to Respondent during discovery identifying information about the patient(s) at issue in this Accusation.

1 unauthorized removal of medication because she was still on probation in her job at UCLA  
2 Medical Center, but she resigned on or about December 7, 2007.

3 e. On December 13, 2007, the Board received a written complaint from Ms. Anderson,  
4 alleging that Respondent admitted she "took" 10 - 2 mg Hydromorphone tubexes unlawfully. On  
5 or about March 11, 2010, the Board's investigator interviewed Respondent, who indicated that  
6 she was working rotating day and night shifts, was depressed, and had a difficult time with her  
7 job at the UCLA Medical Center. In December of 2007, she stated she decided to take Dilaudid  
8 from the Pyxis machine, because she thought it would help alleviate her stress and depression.  
9 She removed the Dilaudid using her Pyxis code and a single patient's name, but did not recall the  
10 exact amount of Dilaudid she removed. Furthermore, Respondent told the investigator that she  
11 was not using or abusing any drugs or alcohol, at that time or at anytime. Respondent stated she  
12 believed the hospital's records, showing that she removed 13 Dilaudid doses, but that 10 Dilaudid  
13 doses were unaccounted for, were correct. Respondent indicated she became nervous and  
14 dropped the 10 doses of Dilaudid into a Sharps container before leaving the hospital. Respondent  
15 stated she did not remove it from the hospital or use the Dilaudid. Also, Respondent indicated  
16 she was in a diversion program for her depression, from 2002 through 2006, and saw a  
17 psychiatrist after she stopped working at UCLA Medical Center. Respondent disclosed to the  
18 investigator that she was taking Ocelexa, an antidepressant, and Trazadone, to help her sleep.

19 **Possession of Controlled Substances:**

20 f. On or about December 6, 2007, Respondent possessed at least 10 - 2mg tubexes of  
21 the controlled substance Hydromorphone, as set forth in Paragraph 14 and subparagraphs (a)-(e)  
22 above, without a valid prescription from a physician or other authorized health care professional,  
23 in violation of Section 4060.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Obtaining a Controlled Substance by Fraud and Deceit)**

26 15. Respondent is subject to disciplinary action pursuant to Code section 2761,  
27 subdivision (d), in that on or about December 6, 2007, Respondent engaged in unprofessional  
28 conduct, by obtaining the controlled substance Dilaudid/Hydromorphone by fraud, deceit,

1 misrepresentation, or subterfuge, in violation of Code sections 2761, subdivision (a), and 2762,  
2 subdivision (a), and Health and Safety Code sections 11170 and 11173, subdivision (a), as set  
3 forth in Paragraph 14, subparagraphs (a)-(f), above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct)**

6 16. Respondent is subject to disciplinary action under Section 2761, subdivision (a) of the  
7 Code, in that on or about December 6, 2007, Respondent committed acts of unprofessional  
8 conduct by failing to account for administration or wastage of medications, by signing out more  
9 medication than was ordered, and/or by signing out medications without a physician's order.  
10 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
11 Paragraph 14, subparagraphs (a)-(f).

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Nursing Practice Act)**

14 17. Respondent is subject to disciplinary action under Section 2761, subdivision (d) of  
15 the Code, on the grounds of unprofessional conduct, in that on or about December 6, 2007,  
16 Respondent violated or attempted to violate, directly or indirectly the provisions of the Nursing  
17 Practice Act. Complainant refers to, and by this reference incorporates, the allegations set forth  
18 above in Paragraph 14, subparagraphs (a)-(f).

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
21 and that following the hearing, the Board of Registered Nursing issue a decision:

- 22 1. Revoking or suspending Registered Nurse License Number 568333, issued to  
23 Respondent Marlene D. Daley;
- 24 2. Ordering Respondent Marlene D. Daley to pay the Board of Registered Nursing the  
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
26 Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: 1/27/11

*Louise L. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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